

218A.275 Assessment and treatment program for first offenders of possession of controlled substance -- Rescission of treatment order -- Voiding of conviction -- Sealing of records.

- (1) A court may request the Division of Probation and Parole to perform a risk and needs assessment for any person found guilty of possession of a controlled substance pursuant to KRS 218A.1415, 218A.1416, or 218A.1417. The assessor shall make a recommendation to the court as to whether treatment is indicated by the assessment, and, if so, the most appropriate treatment or recovery program environment. If treatment is indicated for the person, the court may order him or her to the appropriate treatment or recovery program that will effectively respond to the person's level of risk, criminal risk factors, and individual characteristics as designated by the secretary of the Cabinet for Health and Family Services where a program of treatment or recovery not to exceed one (1) year in duration may be prescribed. The person ordered to the designated treatment or recovery program shall present himself or herself for registration and initiation of the treatment or recovery program within five (5) days of the date of sentencing. If, without good cause, the person fails to appear at the designated treatment or recovery program within the specified time, or if at any time during the program of treatment or recovery prescribed, the authorized director of the treatment or recovery program finds that the person is unwilling to participate in his or her treatment, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment, or may rescind the treatment order and impose a sentence for the possession offense. Upon discharge of the person from the treatment or recovery program by the secretary of the Cabinet for Health and Family Services, or his or her designee, prior to the expiration of the one (1) year period or upon satisfactory completion of one (1) year of treatment, the person shall be deemed finally discharged from sentence. The secretary, or his or her designee, shall notify the sentencing court of the date of such discharge from the treatment or recovery program.
- (2) The secretary of the Cabinet for Health and Family Services, or his or her designee, shall inform each court of the identity and location of the treatment or recovery program to which the person is sentenced.
- (3) Transportation to an inpatient facility shall be provided by order of the court when the court finds the person unable to convey himself or herself to the facility within five (5) days of sentencing by reason of physical infirmity or financial incapability.
- (4) The sentencing court shall immediately notify the designated treatment or recovery program of the sentence and its effective date.
- (5) The secretary for health and family services, or his or her designee, may authorize transfer of the person from the initially designated treatment or recovery program to another treatment or recovery program for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating treatment or recovery program and shall be notified by the secretary of the new treatment or recovery program to which the person was transferred.

- (6) Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment of patients and others for services rendered by the Cabinet for Health and Family Services, unless the person and the treatment or recovery program shall arrange otherwise.
- (7) None of the provisions of this section shall be deemed to preclude the court from exercising its usual discretion with regard to ordering probation or conditional discharge.
- (8) Except as provided in subsection (12) of this section, in the case of any person who has been convicted for the first time of possession of controlled substances, the court may set aside and void the conviction upon satisfactory completion of treatment, probation, or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a first offense for purposes of this chapter or deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Voiding of a conviction under this subsection and dismissal may occur only once with respect to any person.
- (9) If the court voids a conviction under this section, the court shall order the sealing of all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records, except as provided in KRS 27A.099. The court shall order the sealing on a form provided by the Administrative Office of the Courts. Every agency with records relating to the arrest, charge, or other matters arising out of the arrest or charge that is ordered to seal records, shall certify to the court within sixty (60) days of the entry of the order that the required sealing action has been completed.
- (10) After the sealing of the record, the proceedings in the matter shall not be used against the defendant except for the purposes of determining the person's eligibility to have his or her conviction voided under subsection (8) of this section. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record has been sealed shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.
- (11) Inspection of the sealed records may thereafter be permitted by the court pursuant to KRS 27A.099 or upon a motion by the person who is the subject of the records and only to those persons named in the motion or upon a motion of the prosecutor to verify a defendant's eligibility to have his or her conviction voided under subsection (8) of this section.
- (12) A person who has previously had a charge of possession of controlled substances dismissed after completion of a deferred prosecution under KRS 218A.14151 shall not be eligible for voiding of conviction under this section.

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 156, sec. 8, effective July 12, 2012. -- Amended 2011 Ky. Acts ch. 2, sec. 21, effective June 8, 2011. -- Amended 2005 Ky. Acts ch. 99, sec. 549, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 489, effective July 15, 1998. -- Created 1992 Ky. Acts ch. 441, sec. 9, effective July 28, 1992.